

1 . UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 - - - - - X 22-CV-0842  
4 DEANNA MARLENE BELLAVIA,  
Plaintiff

5 Vs. Buffalo, New York  
6 ORLEANS COUNTY ET AL, January 24, 2023  
Defendant  
7 - - - - - X

8 TRANSCRIPT OF ORAL ARGUMENT  
9 BEFORE THE HONORABLE JEREMIAH J. MCCARTHY  
10 UNITED STATES DISTRICT JUDGE

11 ADVOCATES FOR JUSTICE  
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1 THE CLERK: All rise.

2 THE COURT: Morning.

3 MR. MCMURRAY: Morning.

4 THE COURT: Please be seated.

5 THE CLERK: We're on the record in civil  
6 proceeding 22-CV-842 Bellavia V Orleans County et al.  
7 For oral argument regarding defendant's motion to  
8 dismiss. Present in the courtroom are Nathan McMurray  
9 for plaintiff. Shannon O'Neill for the county  
10 defendants, Donald O'Brien Jr. And William Savino for  
11 defendant Bellavia. The Honorable Jeremiah J.  
12 McCarthy presiding.

13 THE COURT: Good morning, again, everyone.  
14 Ms. O'Neill, I know you just appeared on behalf of the  
15 county defendants; is that right?

16 MS. O'NEILL: Yes, Your Honor. I'm here  
17 just as a bystander for right now.

18 THE COURT: Right.

19 MS. O'NEILL: We have an extension.

20 THE COURT: Understood. Understood. Um,  
21 all right. I have um defendant David Bellavia's  
22 motion to dismiss the original complaint. As you  
23 know, Mr. McMurray filed early this morning a motion  
24 to amend the complaint. Um, I'm going to focus on the  
25 original complaint today, and what I'm going to

1 discuss with you the amended proposed amended  
2 complaint as well and we'll see where we go.

3 Um, let me ask preliminarily to everybody.

4 Um, I sent an email several weeks ago asking for a  
5 copy of the criminal complaint. Nobody sent it to me.

6 Um, so I still don't know exactly what the criminal  
7 charges against -- I'm going to refer to Ms. King, is  
8 that the name she goes by?

9 MR. MCMURRAY: Ms. King, yes.

10 THE COURT: Because otherwise we have two  
11 Bellavias and it gets confusing, so I'll refer to her  
12 as Ms. King. Now, in your proposed amended complaint  
13 you I guess indicate that although I don't think you  
14 directly say it that the charge was second degree  
15 harassment, but I mean, does anybody -- I still don't  
16 know what the -- what the charge was.

17 MS. O'NEILL: Your Honor, if I could have a  
18 moment to be heard briefly. That's part of the reason  
19 why I was here is that --

20 THE CLERK: Can you please approach the  
21 microphone?

22 MS. O'NEILL: I apologize.

23 THE COURT: Yeah. Why don't you sit there?

24 MS. O'NEILL: Sure. I was going to sit back  
25 there just because I wasn't actually appearing.

1 THE COURT: That's all right.

2 MS. O'NEILL: Part of the reason I wanted to  
3 be here, Your Honor, is with respect to the criminal  
4 matter. The criminal matter it's our understanding  
5 from the county's position is that it was sealed  
6 pursuant to criminal procedural law 160.1. I  
7 circulated a stipulation to plaintiff's counsel as  
8 well as to co-defendants with the stipulation to  
9 unseal the criminal matter so that the -- obviously  
10 with the civil matter being directly related to the  
11 criminal matter, it waives any protections pursuant to  
12 160. The stipulation was something I've used in other  
13 cases. I sent it to plaintiff's attorney. He has yet  
14 to sign that. I brought it with me today in hopes  
15 that maybe that could be resolved as well, but that's  
16 likely why the criminal complaint has not been  
17 provided to Your Honor because of the sealing order  
18 that's currently in place.

19 THE COURT: Well, thank you for that. It  
20 would have been nice if somebody had given me that  
21 explanation previously.

22 MR. SAVINO: We agreed to sign stipulation  
23 unsealing the records, and um, I so advised Ms.  
24 O'Neill.

25 THE COURT: Okay. Um, Mr. McMurray, what's

1       your position on that?

2               MR. MCMURRAY: Well, we asked to see what's  
3       in it, and at this time, we don't know what's in it  
4       either but if it's going to be --

5               THE COURT: Well, wait a second. You don't  
6       know what's in the criminal complaint?

7               MR. MCMURRAY: I only have what my client  
8       has given me. I have not seen what's in the total  
9       complaint, so we do not have it.

10              THE COURT: But your allegation both in the  
11       original complaint and in the proposed amended  
12       complaint is that she was arrested and maliciously  
13       prosecuted without probable cause, and I certainly  
14       would need to know what the elements of the crime were  
15       that she was charged with.

16              MR. MCMURRAY: I agree, Your Honor. So I  
17       was -- we were being cautious because I wanted to know  
18       the full scope of what's in it because of --

19              THE COURT: The full scope of what's in  
20       what?

21              MR. MCMURRAY: The allegations against her  
22       in the complaint. So I simply ask can I see what's in  
23       it. I don't know what's in your documents either.  
24       I'm not sure what they're totally unsealing, and I  
25       apologize if that's confusing to you but it has to be

1       unsealed.

2                   THE COURT: Well, how can you -- consistent  
3       with Rule 11 how can you make an allegation that there  
4       was not probable cause for her arrest or for her  
5       prosecution if you don't even know what the underlying  
6       charges were?

7                   MR. MCMURRAY: Your Honor, because she  
8       didn't do anything. And --

9                   THE COURT: She didn't do what though? I  
10      mean, that's the issue. What was she charged with?  
11      Was there probable cause with what she -- for what she  
12      was charged with? Because you're -- your only  
13      allegation against David Bellavia is that he conspired  
14      with the other defendants to effectuate her wrongful  
15      arrest and malicious prosecution, and probable cause  
16      is an element of both of those claims.

17                  So it seems to me that we all need to know  
18      what the -- what the specific charge was and then  
19      address the elements to see if there was probable  
20      cause, and I think that's true even at the pleading  
21      stage. Let me -- counsel, you want to weigh in on  
22      this?

23                  MR. O'BRIEN: Your Honor, as soon as you  
24      made your request, it was not long after that that we  
25      were advised by Ms. O'Neill that she had circulated a

1 stipulation to release the sealed file on this  
2 criminal -- underlying criminal case, so I apologize.  
3 That's why I probably should have indicated to you  
4 that it had been filed under sealed and that we were  
5 waiting for that process to complete. Um, but, um, I  
6 think that one of the failings of the complaint is  
7 that it really doesn't say anything about the  
8 underlying arrest other than it was wrong, um, and I  
9 agree with you that we need to get that file in front  
10 of you.

11 THE COURT: The original complaint says --  
12 and again, because this is a 12B6 motion I'm only  
13 talking about pleading, but pleading has to be in a  
14 non conclusory fashion, and the complaint -- the filed  
15 complaint not the proposed amended complaint just  
16 makes reference in a couple places to harassment while  
17 under the penal law there's like five different  
18 versions of harassment each of which contains  
19 different elements.

20 Now, in the proposed amended complaint, Mr.  
21 McMurray, you allude to second degree harassment, but  
22 that also has a number of elements to it, and I looked  
23 up the penal law in second degree harassment. That's  
24 a violation. It's not a misdemeanor, but you make  
25 reference in the proposed second amended complaint to

1 a misdemeanor. So I still don't know what we are  
2 talking about.

3 MR. MCMURRAY: Your Honor, I do not object  
4 to unsealing it. We filed our original complaint  
5 based on the documentation that Ms. Bellavia had in  
6 her possession. And I apologize if we were overly  
7 cautious because of the nature of the -- of our  
8 complaint we feel we don't exactly trust the people  
9 that arrested her and we were -- she is a public  
10 figure and I was are worried about --

11 THE COURT: As is he.

12 MR. MCMURRAY: Correct.

13 THE COURT: And the only thing that's quite,  
14 quite, quite obvious to me is that these two people do  
15 not like each other. I get that.

16 MR. O'BRIEN: So stipulated.

17 THE COURT: But -- and I got to say, um, I  
18 alluded to it in my decision on the motion to strike  
19 which I denied but I am troubled. Maybe it's not my  
20 concern, but I'm troubled by the level of detail that  
21 went into this vis-à-vis the non disparagement  
22 provisions of the divorce documents. Um, that's -- I  
23 don't think that's my battle, but it -- it kind of  
24 jumps out at me and on both sides. Okay? Not just  
25 one side to the other.



1           As I said, these people obviously don't like  
2   each other. I think they're hopefully both better off  
3   being divorced um, but all right. I've said my peace.  
4   Why don't we go back to argument? It's your motion,  
5   Mr. O'Brien. I'll hear from you and then Mr.  
6   McMurray, I'll hear from you.

7           MR. O'BRIEN: Your Honor, let me just say  
8   I'm somewhat at a disadvantage. I have not had time  
9   to read the motion that was filed early this morning.

10          THE COURT: Yeah. Well, it was filed at  
11   like ten to three this morning.

12          MR. O'BRIEN: Yeah. I got in my car and  
13   drove from Canandaigua to Buffalo.

14          THE COURT: Again, I'm not expecting you to  
15   be conversing with it. I've read it, but it -- I'll  
16   just tell you it -- likewise, it seems to narrow the  
17   charges down to second degree harassment, but maybe it  
18   does, maybe it doesn't because now we -- I guess it's  
19   stipulated nobody knows exactly what the charges were.  
20   Well, I guess your client would know because he signed  
21   the criminal complaint, right?

22          MR. O'BRIEN: He signed the --

23          THE COURT: And you say you are not at  
24   liberty to address that now because it's sealed.

25          MR. O'BRIEN: Well, I know that you have

1       noted some equivalency to be fair between the two  
2       parties here, but we have not disclosed anything  
3       except under sealed that was part of the divorce  
4       proceeding.

5               THE COURT: Yeah. Well, I mean, Ms. King  
6       claims that Mr. Bellavia's book which I have not read,  
7       I've seen a couple of the excerpts, is disparaging of  
8       her. So what's good for the goose is good for the  
9       gander. I don't know.

10              MR. O'BRIEN: Well, we have not used this  
11       form for any kind of disclosures --

12              THE COURT: Right.

13              MR. O'BRIEN: -- that I think one might  
14       argue violates the non disparagement of the divorce  
15       decree. That said, um, I do think today's objective  
16       should be to deal with the original complaint because  
17       I'm not even had an opportunity to look at the motion  
18       and the proposed amended complaint in any way. All I  
19       will say is that um -- in that regard is if you look  
20       at um the decision from your colleague Judge Foschio  
21       from a few months ago in a case called (inaudible) V  
22       City of Buffalo.

23              THE COURT: Did you cite that?

24              MR. O'BRIEN: It's --

25              THE COURT: No. Did you cite it in your

1 papers?

2 MR. O'BRIEN: I did not, Judge, because I  
3 didn't know there was going to be an amended complaint  
4 until yesterday when I got --

5 THE COURT: Oh, okay.

6 MR. O'BRIEN: -- the letter from --

7 THE COURT: Well, when you say that there's  
8 going to be an amended complaint, maybe there will be,  
9 maybe there won't be. There's a motion to amend.

10 MR. O'BRIEN: That's correct, and I'll save  
11 my argument against that for the --

12 THE COURT: Well, now you got my curiosity  
13 up.

14 MR. O'BRIEN: Okay.

15 THE COURT: So what did he say? He's a good  
16 judge, you know.

17 MR. O'BRIEN: Um.

18 THE COURT: And would somebody tell him  
19 that.

20 MR. O'BRIEN: Anyway, Judge, um, I'm sure  
21 you're familiar with the well established standard  
22 that should not be granted where it would be a  
23 futility.

24 THE COURT: Yeah, I understand that.

25 MR. O'BRIEN: Okay.

1                   THE COURT: And it may or may not be futile.  
2     Right now, none of us know the underlying charge was.

3                   MR. O'BRIEN: Right.

4                   THE COURT: Well, you know it and you can't  
5     talk about it, and Mr. McMurray doesn't know.

6                   MR. O'BRIEN: But what Judge Foschio said in  
7     the (inaudible) case was 22 US District Lexus 94 200  
8     is that where the responses in the opposing dismissal  
9     are devoid of any indicia that the pleading  
10    substantive deficiencies may not feasibly be overcome  
11    dismissal with prejudice is supported. In other  
12    words, you look at what the opposition was to the  
13    motion to dismiss the initial complaint, and if that  
14    opposition does not provide a reasonable basis for  
15    assuming that the complaint could be brought up to  
16    snuff under the pleading standards, then leave to  
17    replead should not be granted, and looking at the  
18    papers in opposition submitted by Mr. McMurray which  
19    essentially just augmented the allegations in the  
20    complaint that we sought to um strike which  
21    essentially are devoid to all of the terrible things  
22    that my client purportedly said leading up to the  
23    divorce decree, um, they still don't and would not  
24    satisfy the standards required under (inaudible) for a  
25    1983 complaint, so my position would be um that you

1     need to look at what they put up in their opposition,  
2     and if that does not sufficiently get the complaint  
3     past the finish line, then you can deny leave to  
4     replead but that was based only on what was a letter  
5     yesterday indicating that later yesterday we would be  
6     getting a motion for leave to amend. So when I look  
7     at that, I will have to address it.

8             But insofar as the motion to dismiss the  
9     initial complaint, I won't (inaudible) here, Judge. I  
10    think that um it really is just the question of  
11    looking at the complaint and seeing whether it passes  
12    muster and really nothing that I can say is going to  
13    make it better or worse. All I can say is that I  
14    thought we had identified the only allegations in the  
15    complaint that could reasonably be construed to  
16    support the conspiracy charge other than the  
17    allegations that we sought to strike which really  
18    relate to the parties tumultuous end of their  
19    marriage, but if you look at Paragraphs 29, 30, 53 and  
20    74, they are really the conclusory type of allegations  
21    that the courts have extrude in many, many decisions  
22    some of which were cited in our original brief and in  
23    our reply brief.

24             If you look at two of the allegations,  
25    Paragraph 29 and 47, they allude to Mr. Bellavia's

1 friendship with Mr. Black, and as we pointed out on  
2 our initial memorandum of law the fact that the  
3 arresting officer or other members of law enforcement  
4 may have friendships with the complainant does not  
5 serve to support a conspiracy charge under Section  
6 1983 against the private or non state actor. And then  
7 with respect to the allegations that suggest that  
8 there was some ongoing contact between Mr. Black and  
9 Mr. Bellavia, we cited cases in our initial brief in  
10 the proportion that that is the kind of routine  
11 contact that is to be expected to be in a criminal  
12 prosecution, and therefore, that in and of itself does  
13 not support a conspiracy claim against a private or  
14 non state actor under 42 USC Section 1983.

15 So I really don't have anymore to add,  
16 Judge, than what's in my memorandum of law that we  
17 submitted initially in support of the motion and in  
18 the reply memorandum of law because I believe that the  
19 complaint is willfully inadequate and does not meet  
20 the standards particularly given the applicable law.  
21 So unless you have any questions.

22 THE COURT: Well, I -- now, she alleges that  
23 she lives in Batavia which is in Genesee County;  
24 right?

25 MR. MCMURRAY: Correct.

1                   THE COURT: And that she had never been  
2 to -- which county were the charges alleged in?

3                   MR. MCMURRAY: Your Honor --

4                   THE COURT: Orleans County?

5                   MR. O'BRIEN: Yes.

6                   MR. MCMURRAY: If I may.

7                   THE COURT: And that she had never been to  
8 Orleans County for anything relative to this, so why  
9 would charges be lodged in Orleans County? Or is this  
10 something you can't discuss until we get the complaint  
11 unsealed?

12                  MR. O'BRIEN: No, Your Honor. I -- I think  
13 that that -- those questions would be better reserved  
14 for um the municipal defendants when and if the issues  
15 are drawn.

16                  THE COURT: Well, but the conspiracy charge  
17 relates to Mr. Bellavia which also then ties in the  
18 underlying -- I mean, the conspiracy as alleged  
19 whether conclusory or not is that they -- Bellavia  
20 conspired with the others to effectuate her wrongful  
21 arrest and her malicious prosecution, and one of the  
22 issues that strikes me as a little curious in that  
23 regard is if she didn't do anything in Orleans County  
24 then why were charges lodged there? Mr. Savino, you  
25 look like you anxiously want to --

1           MR. SAVINO: That's his county of residence  
2     so it's very natural it be in Orleans County.

3           THE COURT: But doesn't she have -- I'm not  
4     really familiar with state criminal procedure.

5           MR. SAVINO: Neither am I.

6           THE COURT: After 16 years, I'm still  
7     learning my way around federal criminal procedure, but  
8     why would -- why would -- doesn't the -- doesn't --  
9     don't the wrongful acts have to have occurred in the  
10    county?

11          MR. O'BRIEN: Your Honor, I -- all I can say  
12    is --

13          THE COURT: All right. I'm going to make a  
14    record. Savino is now saying there is something he  
15    doesn't know.

16          MR. SAVINO: I stipulate that I don't know.

17          THE COURT: All right. Well, that's one --  
18    go ahead.

19          MR. O'BRIEN: Judge, you have to -- as with  
20    any of the allegations in the complaint, you have to  
21    accept them as true for purposes of determining a Rule  
22    12 B6 motion.

23          THE COURT: Yeah.

24          MR. O'BRIEN: So I didn't see any reason to  
25    try and disprove that allegation or any of the other



1       allegations in the complaint.

2               THE COURT:  No, I understand that.

3               MR. O'BRIEN:  Yeah.

4               THE COURT:  I'm just saying that's a  
5       question -- it's something here seems to be a little  
6       bit off --

7               MR. O'BRIEN:  Well and it may well be --

8               THE COURT:  -- in terms of what happened and  
9       why it happened.

10              MR. O'BRIEN:  It may well be that there were  
11       in fact acts that occurred in Orleans County based  
12       upon Mr. Bellavia's residence there.  Particularly, I  
13       mean, we're talking about modern communications, so  
14       I'm not really prepared to -- to offer a rebuttal --

15              THE COURT:  Okay.

16              MR. O'BRIEN:  -- of that factual allegation,  
17       but I don't think that that changes the fact that the  
18       complaint still does not have the requisite  
19       allegations regarding a conspiracy on -- by a private  
20       non state actor in a 42 USC civil rights violation.

21              THE COURT:  Okay.  Okay.  All right.  Mr.  
22       McMurray, I'll hear from you.

23              MR. MCMURRAY:  Well, first, I'd like to say  
24       regarding the difficult language or the important  
25       language in the complaint, it is not language from Ms.

1 Bellavia. She did not communicate to Mr. Bellavia  
2 like that. Ms. King -- there are no texts from her  
3 like that. And I know it's difficult to read. It's  
4 difficult to consider. We included it because it's  
5 part of the context of the threats that were building  
6 up against her. It's not with joy or zest that we put  
7 that in there. I don't speak like that. I'm sure  
8 Your Honor you don't speak like that. She was living  
9 in fear, and there were -- in our amended brief and we  
10 alluded that in the original complaint, there were --  
11 it was building up and building up with threats that  
12 I'm going to arrest you. He literally says things  
13 like that. He says you're in trouble. He's  
14 threatening her, and it's relevant to the context of  
15 how she was treated and what eventually happened to  
16 her.

17 Um, to the point regarding the -- the  
18 complaint, again, this has to be read in a light most  
19 favorable to Ms. Bellavia and the facts have to be  
20 taken as true, and the standard here is plausibility.  
21 Now, under normal circumstances, would it be plausible  
22 to call the police for harassment when there are  
23 really no harassment happening? And you just happen  
24 to pick up the phone and call the DA's office in a  
25 different county where your friend lives. So I think

1     that's a pretty strange set of circumstances. And  
2     that -- the complaint from the get go and the amended  
3     complaint clearly state those facts, and they're very  
4     troubling facts.

5             To the residence of Mr. Bellavia, he signed  
6     an affidavit right after the arrest from his residence  
7     in Florida. He lives in Naples, Florida. His child  
8     at home and many of his friends live in Orleans County  
9     including Investigator Defendant Corey Black. So I  
10    mean, these facts are troubling. It was difficult to  
11    write and submit these facts to the Court, but we did  
12    it to show the very difficult situation that Ms.  
13    Bellavia was living in, and I should also emphasize  
14    the courage that she has to bring the complaint today  
15    to say that her rights were violated and that she was  
16    treated in an inappropriate way.

17            We bring this complaint, and we understand  
18    how serious it is and how difficult it is to bring  
19    these allegations in this situation, and we recognize  
20    to your point they are not friends, but people should  
21    not be arrested without grounds especially by their  
22    friends who happen to work for the district attorney's  
23    office and haven't been a sheriff for 14 years. This  
24    man has not been a police officer for -- excuse me,  
25    since 2014.

1                   So I think the burden is on the defense  
2 eventually to explain why his friend who also ran for  
3 political office who also was part of the same  
4 political circles who was working for the district  
5 attorney's office in a high crimes unit happened to  
6 arrest his wife.

7                   THE COURT: Okay. Um, I'm going to think  
8 about all this and I'll get a decision out. One more  
9 thing that just troubles me in general is um this  
10 arrest allegedly occurred in January of 2021; correct?  
11 And I don't know -- and I take it the prosecution  
12 ensued shortly thereafter and was wrapped up but  
13 the -- the divorce was concluded in what December of  
14 2021.

15                  MR. O'BRIEN: Yes, Your Honor.

16                  THE COURT: And I know those documents are  
17 under sealed but I've looked at them and there's a lot  
18 of resolution of various outstanding issues between  
19 the parties that just again strikes me as a little  
20 curious that this would come up after all of that had  
21 been resolved.

22                  MR. MCMURRAY: I can speak to that. Ms.  
23 Bellavia -- the reason why we included those texts and  
24 those comments and there are literally binders of  
25 similar comments, this is a woman who was living in

1     fear. She's living in fear. She was very -- she --  
2     she had a very difficult time bringing these -- in the  
3     same situation she was in in divorce court, she had a  
4     very difficult time bringing these texts forward.  
5     They were not considered by and large, and she was  
6     afraid for a long time and she currently is afraid.

7             So the question is why is the timing of  
8     this -- there's been some exception since the divorce.  
9     I think she's starting to have a little more courage,  
10    and the efforts by the defense, by Mr. Bellavia to  
11    silence her are extremely disturbing, and they  
12    continue, and the level, the extent of the legal um  
13    maneuvers to make sure she can never talk about  
14    anything with her life even general topics related  
15    to -- to abuse and domestic violence, I've never seen  
16    anything like it. And I think the reason why we've --  
17    our complaint is valid on its face is because we have  
18    met the standard of plausibility saying is it  
19    plausible that under these circumstances she would be  
20    arrested in this matter especially given all the  
21    threats by Mr. Bellavia. Our -- if we read the facts  
22    in a light most favorable to Ms. King, does she  
23    deserve her day in court to figure out exactly what  
24    happened? Why did this happen? Why were there such  
25    extensive efforts to silence her and keep her quiet?

1 Does she have a right to speak out against it?

2 And so Your Honor, I hope you look at the  
3 totality of the circumstances and realize that she  
4 does not bring this with glee. This is a woman who  
5 continues to live in fear, who is afraid, who was  
6 arrested outside of her home county. I think the  
7 entire circumstances are just completely strange, and  
8 she deserves her day in court.

9 THE COURT: Okay. Um, now, I believe you  
10 have agreed now to stipulate to unseal the underlying  
11 criminal complaint; is that correct?

12 MR. MCMURRAY: Yes, Your Honor.

13 THE COURT: Okay. So do you have the stip  
14 with you?

15 MS. O'NEILL: Oh. Of course, Your Honor.

16 THE COURT: Okay. So that can be executed  
17 today and then um then you can get the -- once that's  
18 executed how quickly can -- where does that complaint  
19 have to come from then?

20 MS. O'NEILL: So I was going to ask that  
21 question to Your Honor. The way I've typically done a  
22 stipulation to unseal the criminal matter, I've  
23 typically sent -- once it's signed by the parties I  
24 sent it to the judge who handled the criminal matter  
25 which in this case was a town judge.

1 THE COURT: Right.

2 MS. O'NEILL: I believe that potentially  
3 Your Honor could potentially so order it. I know that  
4 the criminal procedural law comes up in the issue of  
5 discovery. If you are hesitant with that, I'm fine  
6 keeping it the original of having the town court judge  
7 sign it. Um, that can usually take a couple weeks or  
8 so.

9 THE COURT: Yeah. I mean, I know federal  
10 judges are often called all powerful, but I don't  
11 know -- I don't know whether I have that authority but  
12 --

13 MS. O'NEILL: I know it's come up in  
14 discovery context. Obviously this is prediscovery.

15 THE COURT: Yeah.

16 MS. O'NEILL: So I brought both sets of  
17 stipulations.

18 THE COURT: But if a state court judge  
19 ordered the documents be sealed, I think it ought to  
20 be up to that person to unseal them based on the  
21 parties stipulation unless somebody has a different  
22 view. But the only thing I'm certain of is that I  
23 think any pleading which would be considered has to go  
24 into greater detail about what exactly the criminal  
25 charges were, what the elements of that charge was and

1       why there was not probable cause for those. So I'm  
2       going to write on this briefly, but I think everybody  
3       should stand down until we get -- get the underlying  
4       criminal complaint.

5               MR. O'BRIEN: Your Honor, I was going to  
6       suggest that particularly with respect to the fact  
7       that now there is a motion to --

8               THE COURT: Yeah.

9               MR. O'BRIEN: -- amend the pleading pending,  
10      I would ask that the scheduling order be deferred  
11      until we get our hands on that file and are able  
12      legally and properly to use it if appropriate.

13              THE COURT: Yeah. We'll -- I'll address  
14      that.

15              MR. O'BRIEN: Okay.

16              THE COURT: And I'll get something out  
17      shortly. Okay?

18              MR. O'BRIEN: Thank you, Judge.

19              THE COURT: I take it -- as in every case,  
20      um, I ask at the out set whether the parties have had  
21      any settlement discussions, and sounds like, Mr.  
22      McMurray, go ahead.

23              MR. MCMURRAY: Before we brought the  
24      charges, we asked to settle this and we are --

25              THE COURT: That's right. I saw your



1 letter.

2 MR. MCMURRAY: We do not want this public.

3 Yeah. I just want to note that.

4 THE COURT: Yeah. I take it there's no  
5 interest in discussing those at this point; right?

6 MR. O'BRIEN: Not at this point, Your Honor.

7 THE COURT: Okay. All right. Thank you  
8 all.

9 MS. O'NEILL: Your Honor, I apologize. Just  
10 to interject one second. Just from the county  
11 defendants in terms of we received --

12 THE COURT: You don't need to answer  
13 anything right now.

14 MS. O'NEILL: Okay. All right.

15 THE COURT: You'll see in my --

16 MS. O'NEILL: Okay.

17 THE COURT: Okay? And then we'll see where  
18 we go from there. Okay?

19 MS. O'NEILL: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. MCMURRAY: Thank you.

22 (Proceeding concluded at 11:32 a.m.)

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**CERTIFICATE OF COURT REPORTER**

I certify that this is a true and accurate  
record of proceedings in the United States District  
Court for the Western District of New York before the  
Honorable Jeremiah J. McCarthy on January 24, 2023.

S/ Brandi A. Wilkins

Brandi A. Wilkins

Official Court Reporter